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## **OLR Bill Analysis**

**sSB 312 (File 423, as amended by Senate “A,” “B,” and “C”)\***

### ***AN ACT CONCERNING A LONG ISLAND SOUND RESOURCE AND USE INVENTORY AND A LONG ISLAND SOUND BLUE PLAN.***

#### **SUMMARY:**

This bill requires the Department of Energy and Environmental Protection (DEEP) commissioner, within available resources, to:

1. coordinate the completion of an inventory of Long Island Sound’s uses and natural resources by a UConn subcommittee (the “Long Island Sound Resource and Use Inventory”) and
2. develop a plan to preserve and protect the sound that may include, maps, illustrations, and other media (the “Long Island Sound Blue Plan”).

The commissioner must do these things with a Long Island Sound Resource and Use Inventory and Blue Plan Advisory Committee the bill creates. The bill allows him to accept, on the state’s behalf, gifts, grants, donations, or bequests to help complete the inventory and develop the plan.

The bill establishes a process to develop the inventory and plan, including provisions for public review and comment. The draft inventory and plan must be completed by March 1, 2019. Once the commissioner finalizes the plan, it must be (1) reviewed by the Environment Committee and (2) submitted to the General Assembly for a vote. The inventory and plan must be reviewed and updated every five years.

Under the bill, the plan’s policies, locations, or standards apply to a spatial planning area as shown on a map the advisory committee prepares. The plan must be a factor for DEEP or specified other state agencies to consider when reviewing applications to conduct certain

coastal activities.

Lastly, the bill expands the commissioner's authority to lease or otherwise allow for the occupancy of submerged lands under or with lighthouses. Current law allows him to lease or otherwise authorize control over, for consideration he sets and for a period of up to 10 years with a renewal option, the submerged lands associated with the Penfield Reef Lighthouse to preserve it according to state and federal law. Any lease must be consistent with the state's Coastal Management Act and allow for reasonable public access, preservation, and education.

The bill allows him instead to lease or otherwise authorize the occupancy of submerged lands of any lighthouse. But leases must be (1) for 30 years; (2) renewable; and (3) consistent with state law and interests such as reasonable public access when a nonprofit organization is the lessee. The bill also specifies that it does not relieve lessees from obtaining necessary permits to construct new structures or appurtenances on the submerged lands.

\*Senate Amendment "A," among other things:

1. makes the DEEP commissioner, instead of the OPM secretary, responsible for coordinating the completion of the inventory and developing the plan;
2. requires the inventory to be completed by a UConn-convened subcommittee and eliminates sending it to the Environment Committee;
3. extends the deadline to complete the inventory and plan until March 1, 2019;
4. adds input from a bi-state marine spatial planning working group;
5. shifts the appointing authority of six advisory committee members from the governor to the legislative leaders and expands the committee's membership;

6. expands the activities that must have the plan taken into account when their applications are reviewed; and
7. changes the effective date of the inventory and plan provision from October 1 to July 1, 2014.

\*Senate Amendment "B" sets the limit of the spatial planning area for rivers that flow into the Sound.

\*Senate Amendment "C" adds the lighthouse provision.

EFFECTIVE DATE: July 1, 2014, except for the lighthouse provision, which takes effect October 1, 2014.

## **ADVISORY COMMITTEE**

### ***Membership***

Under the bill, the advisory committee consists of 16 members. It includes (1) the DEEP commissioner and OPM secretary, or their designees; (2) one representative each from the agriculture and transportation departments and the Connecticut Siting Council; (3) a member from a marine-related program at UConn; and (4) 10 appointed members, as Table 1 shows.

**Table 1: Advisory Committee Appointees**

<b><i>Appointing Authority</i></b>	<b><i>Number</i></b>	<b><i>Qualifications</i></b>
Governor	Four	<ul style="list-style-type: none"><li>● One who represents the gas and electric distribution industries.</li><li>● One who represents the shellfish industry.</li><li>● One who represents coastal municipalities.</li><li>● One who represents a nonprofit conservation organization with expertise in marine assessments and planning.</li></ul>
Senate President Pro Tempore	One	A representative of a conservation organization that specializes in coastal issues.
Senate majority leader	One	A representative of the commercial boating or shipping industries.
Senate minority leader	One	A representative of the marine trades industry.
House speaker	One	A representative of the commercial finfish industry.
House majority	One	A representative of coastal municipalities.

leader		
House minority leader	One	A representative of the recreational fishing and hunting community.

The bill requires the DEEP commissioner to serve as the committee's chairperson and convene the first meeting by August 30, 2014 (i.e., 60 days after July 1, 2014). It allows him to ask committee members to help with administrative functions such as convening and noticing meetings and drafting assessments and reports.

The bill places the committee in DEEP for administrative purposes only. Thus, it makes DEEP responsible for, among other things, providing administrative and clerical functions for the committee to the extent the DEEP commissioner considers it necessary.

### ***Committee Responsibilities***

In addition to helping the DEEP commissioner develop the draft inventory and plan, the bill requires the committee to advise him on operating, implementing, and updating the inventory and plan within six months after the General Assembly approves the plan. It must also meet quarterly to review the plan's implementation, identify emerging issues, and recommend any needed or desirable changes to the plan.

### **LONG ISLAND SOUND RESOURCE AND USE INVENTORY**

Under the bill, the inventory must be completed by a Long Island Sound Inventory and Science subcommittee convened by UConn. It must be comprised of the best available information and data on Long Island Sound's natural resources and uses, including all of its:

1. plants, animals, and habitats;
2. ecologically significant areas in nearshore and offshore waters and their substrates (surfaces where organisms grow);
3. uses of the waters and substrates such as (a) boating and fishing, (b) shellfish beds, (c) aquaculture and energy facilities, (d) shipping corridors, and (e) electric power line, gas pipeline, and telecommunications crossings; and

4. updates and additions to the comprehensive environmental assessment and plan on Long Island Sound crossings (such as pipelines).

## **LONG ISLAND SOUND BLUE PLAN**

### ***Purposes***

The bill requires the plan to:

1. establish the state's goals, siting priorities, and standards for effective stewardship of the Sound's waters held in trust for public benefit;
2. promote science-based management practices that consider existing natural, social, cultural, historic, and economic characteristics of planning areas within the Sound;
3. preserve and protect traditional riparian and water-dependent uses and activities;
4. promote maximum public access to the Sound's waters for traditional public trust uses, such as boating and fishing, unless it is a national security interest or it is necessary to (a) protect coastal resources or (b) preserve public health, safety, and welfare;
5. reflect the Sound's waters' importance to state residents who make a living from and enjoy recreational boating or fishing;
6. analyze the implications of existing and potential uses and users of the Sound, focusing on avoiding conflicts;
7. reflect the value of biodiversity and ecosystem health, in regard to ecosystem interdependence;
8. identify and protect special, sensitive, or unique estuarine and marine life and habitats such as scenic and visual resources;
9. adapt to evolving knowledge and understanding of the marine environment, including climate change and sea level rise

adaptation;

10. foster sustainable uses that capitalize on economic opportunity without significant detriment to the Sound's ecology or natural beauty;
11. support infrastructure that is needed to sustain the state's economy and quality of life;
12. identify appropriate locations and performance standards for activities, uses, and facilities regulated under state permit programs, such as measures to guide siting uses in a way that is consistent with the plan; and
13. reflect the importance of planning for Long Island Sound as an estuary that crosses state boundaries, including identifying potential measures that encourage the planning.

Under the bill, the plan must be based on the inventory described above and provide for ongoing acquisition and application of up-to-date resource and use data, including seafloor mapping. It must be consistent with the State's Plan of Conservation and Development and the goals and policies contained in the state's Coastal Management Act.

The bill specifies that the plan be developed by a transparent and inclusive process that seeks widespread public and stakeholder participation and encourages public input in decision making. The plan must be coordinated, developed, and implemented with New York, to the greatest extent possible. It must also be coordinated, to the greatest extent feasible, with local, regional, and federal planning entities and agencies that include the (1) Long Island Sound Study, (2) National Ocean Policy's Northeast Regional Planning Body, and (3) the Connecticut-New York Bi-State Marine Spatial Planning Working Group (see BACKGROUND).

### ***Areas Subject to the Plan***

***Waters and Submerged Lands.*** The waters and submerged lands

subject to the DEEP commissioner's planning, management, and coordination authority under the plan include:

1. Long Island Sound and
2. its bays and inlets from the mean high water line to the state's waterward boundaries with New York and Rhode Island.

The bill specifies that the high water line is defined by the most recent data of the National Oceanic and Atmospheric Administration.

***Spatial Planning Area.*** The bill requires the advisory committee to prepare a map showing a spatial planning area where the plan's siting policies, location identifications, or performance standards for activities, uses, and facilities must apply. The bill specifies that the area is located seaward of the bathymetric contour of minus 10 feet North American Vertical Datum to the state's waterward boundaries with New York and Rhode Island. But it appears to limit plan's application in estuaries by not extending the planning area to beyond the first motor vehicle or railroad bridge of rivers which flow into the Sound.

## **PUBLIC INVOLVEMENT AND COMMENTS**

### ***Developing the Draft Inventory and Plan***

To help the commissioner develop the inventory and plan, the bill requires the committee to hold at least three public hearings in different coastal municipalities for receiving public comments and submissions. It allows the committee to provide other public outreach and input measures to ensure stakeholder engagement and representation.

While helping to complete the draft inventory and plan, but before they are available for public comment, the committee must consult with the economic and community development commissioner and representatives from:

1. the telecommunications industry,
2. waterfront businesses,

3. a tribal nation, and
4. the tourism or recreation industry.

The bill also requires the committee to consult with applicable New York state agencies, advisory counterparts, and the Connecticut-New York Bi-State Marine Spatial Planning Working Group to create a mutually agreeable process to develop the inventory and plan.

The draft plan must be completed by March 1, 2019.

### ***After Draft Completion***

Once the draft inventory and plan are completed, the bill requires the commissioner to post them on DEEP's and OPM's websites for the public to review and comment on for at least 90 days. He must also publish notice of them in at least five general circulation newspapers, the *Environmental Monitor*, the *Connecticut Law Journal*, and on DEEP's and OPM's websites.

The commissioner must adopt a final draft within 90 days after the public comment period ends.

### **GENERAL ASSEMBLY REVIEW**

Under the bill, once a final draft of the plan is completed, it must be submitted to the Environment Committee for review. The committee must then submit the plan, with its recommendation for approval or disapproval, to the General Assembly within 45 days after the start of the legislative session following receipt of the plan.

The plan takes effect when it is approved by a majority vote of each chamber of the General Assembly. If the General Assembly disapproves it, in whole or part, it is deemed rejected and must return to the advisory committee for revision.

The bill requires revisions to the inventory and plan to be submitted to the Environment Committee and approved by the General Assembly, following the same procedure as described above. The DEEP commissioner is responsible for the review and update to the

inventory and plan, which must occur at least once every five years.

### **USE OF THE INVENTORY AND PLAN**

Under the bill, once the inventory and plan are approved as described above, the plan must be considered when reviewing applications for:

1. aquaculture operations permits or producer licenses, and seaweed planting and cultivation licenses;
2. shellfish grounds leases;
3. certificates of environmental compatibility and public need from the Connecticut Siting Council;
4. emergency or temporary authorizations for certain DEEP-regulated activities;
5. electric power line, gas pipeline, or telecommunications crossings of Long Island Sound;
6. dredging, erecting structures, placing fill, obstructions, or encroachments, or conducting work related to these activities, in tidal, coastal, or navigable waters waterward of the coastal jurisdiction line; or
7. coastal structure maintenance and other activities eligible for a certificate of permission from DEEP;
8. discharging water, substance, or material into state waters; or
9. a state water quality certification pursuant to federal law.

It allows the plan to be used for guidance in pre-application discussions between applicants and the DEEP commissioner.

The bill also requires the commissioner to seek federal approval needed to incorporate the plan as an enforceable policy in the state's coastal management program under the federal Coastal Zone Management Act.

**PUBLIC OUTREACH PROGRAM**

The bill requires the DEEP commissioner to develop and implement a public outreach and information program to inform the public about the plan. It also requires the advisory committee to hold at least one public hearing each year to receive public comments and submissions on the inventory and plan. The program and hearing must be accomplished within available resources.

**BACKGROUND*****Long Island Sound Study***

In 1985, in an effort to better protect Long Island Sound, the federal Environmental Protection Agency, Connecticut, and New York formed the Long Island Sound Study, a bi-state partnership consisting of federal and state agencies, user groups, organizations, and individuals seeking to restore and protect the sound.

***National Ocean Policy's Northeast Regional Planning Body***

Formed by a presidential Executive Order in 2010, the National Ocean Policy was established to help manage the country's oceans and coasts. The policy encourages a science-based spatial planning process to analyze current and future uses of ocean, coastal, and Great Lakes areas. The approach is executed through regional planning bodies. Members of the Northeast Regional Planning Body include federal, tribal, state, and New England Fishery Management Council representatives.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 1 (03/21/2014)

Planning and Development Committee

Joint Favorable

Yea 18 Nay 0 (04/21/2014)

Government Administration and Elections Committee

Joint Favorable

Yea 14 Nay 0 (04/25/2014)